IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1302 OF 2006.

Narayan S. Shanbhag & Ors. ..Petitioners.
V/s
State of Maharashtra and Ors. ..Respondents.

Mr. S.M. Oak with Ms. Nayana Thatte for the petitioners.

Mrs. M. P.Thakur, AGP for the respondent Nos. 1 to 3.

Mr. S.S. patwhardhan for rspondent Nos. 4 and 5.

CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.

DATE : 11TH DECEMBER, 2006.

P.C.

. Heard Mr. Oak, the learned Counsel for the petitioners, Mrs. Thakur, the learned AGP for respondent Nos. 1 to 3 and Mr. Patwardhan, the learned Counsel for the respondent Nos. 4 to 5.

3. The petitioners are aggrieved by the revision in lease charges in respect of the Municipal Shops, which they have taken on lease. The Scheme of the Maharashtra Municipalities Act, 1965 clearly shows that under section 92(3) of the said Act, the Municipality has been

empowered to give on lease its immovable property for a period not exceeding three years and the lease may be renewed by the Municipal Council beyond the period of three years with the permission of the Directors, however, the total period of any lease shall not exceed seven years. No such lease or renewal thereof shall be granted unless supported by the Resolution passed in the meeting of the Council. Whereas, section 272 of the said Act deals with the power to levy the charges, rents, or fees as may from time to time be fixed by the Municipal Council in that behalf. The respondent Municipal Council has framed rules under Section 92 and Bye-laws under section 272 of the Municipalities Act. It is thus clear that the Municipality has power to review the lease charges from time to time. If the said charges have been properly revised or whether the due procedure, as laid down under the said Act, the rules or the bye-law has been followed and what could be the reasonable amount of revision in the lease charges are the subject matters which could be gone in to by the Lower Appellate Court i.e. the learned Magistrate who has such powers under section 169 of the said Act. We therefore, do not agree with the submissions made by the petitioners, that the Municipality has no power to

revise the lease charges and if the revisions is made improperly, unreasonably or illegally, the same can be agitated by filing an appeal under section 169 of the said Act.

4. Hence, the petition is rejected and the petitioners are relegated to the alternative remedy of appeal, if they so desire. If the appeal is presented by the petitioners within a period of four weeks from todayand if there is an issue of limitation, the period of pendancy of this petition shall be taken into consideration by the Lower Appellate Court.

(J.H. BHATIA, J.) **(B.H. MARLAPALLE, J.)**